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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/820,510      | 03/29/2001  | Lorin Evan Ullmann   | AUS920010165US1     | 5082             |

7590

08/03/2004

Joseph R. Burwell  
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EXAMINER

HAN, CLEMENCE S

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/820,510

Applicant(s)

ULLMANN ET AL.

Examiner

Clemence Han

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. An initialed and dated copy of Applicant's IDS form 1449 is attached to the instant Office action.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1, 9, 17, 25, 33 and 41 recite the term "and/or". It is not clear whether claims should be read as "and" or "or".

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1–10, 17–26 and 33–42 are rejected under 35 U.S.C. 102(e) as being anticipated by McKinnon, III et al. (US Pub. 2002/0129143).

In regard to claim 1, 17 and 33, McKinnon III teaches a method for managing bandwidth within a distributed data processing system, the method comprising: establishing a bandwidth history comprising bandwidth usage data associated with multiple entities within the data processing system, wherein an entity within the data processing system is selected from a group comprising a user, an application, and/or an endpoint [0073]; and in response to a requested action within the data processing system, predicting bandwidth usage by the requested action [0072].

In regard to claim 2, 18 and 34, McKinnon III teaches receiving the requested action, wherein the requested action is a target resource within the distributed data processing system, and wherein completion of the requested action depends upon operations of a set of resources along a logical route through the distributed data processing system [0056].

In regard to claim 3, 19 and 35, McKinnon III teaches the requested action received from a requesting user or a requesting application [0056].

In regard to claim 4, 20 and 36, McKinnon III teaches snooping network packets from multiple sources within the distributed data processing system;

filtering the network packets against multiple filter parameters, wherein a filter parameter comprises a user identifier, an application identifier, and/or an endpoint identifier; and reporting packet snoop data to be associated with the requesting entity.

In regard to claim 5, 21 and 37, McKinnon III teaches computing bandwidth usage data from the packet snoop data [0065].

In regard to claim 6, 22 and 38, McKinnon III teaches storing bandwidth usage data as the bandwidth history [0073].

In regard to claim 7, 23 and 39, McKinnon III teaches deriving a set of logical routes from a network topology mapping, wherein each logical route is a series of endpoints that comprise an endpoint-to-endpoint route for completing the requested action [0048].

In regard to claim 8, 24 and 40, McKinnon III teaches displaying the bandwidth usage data to the system administrator in real time [0124].

In regard to claim 9, 25 and 41, McKinnon III teaches the bandwidth usage data measured as bits-per-user, packets-per-user, bits-per-application, and/or packets per application [0065].

In regard to claim 10, 26 and 42, McKinnon III teaches displaying the predicted bandwidth usage for the requested action to the system administrator [0121].

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 11–15, 27–31 and 43–47 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinnon, III et al. in view of Newberg et al. (US Pub. 2002/0093983).

In regard to claim 11, 27 and 43, McKinnon III teaches a method for managing bandwidth within a distributed data processing system, the method comprising: establishing a bandwidth history comprising bandwidth usage data associated with multiple entities within the data processing system, wherein an entity within the data processing system is selected from a group comprising a user, an application, and/or an endpoint [0073]; and in response to a requested action within the data processing system, predicting bandwidth usage by the requested action [0072]. McKinnon III, however, does not teach querying the

bandwidth history by the application that generated the requested action. Newberg teaches querying the bandwidth history by the application that generated the requested action [0037]. It would have been obvious to one skilled in the art to modify McKinnon III to query the bandwidth history by the application as taught by Newberg in order to provide priorities to delay-sensitive data [0039].

In regard to claim 12, 28 and 44, Newberg teaches comparing actual bandwidth usage with predicted bandwidth usage; determining whether to adapt the requested action in response to comparing actual bandwidth usage with predicted bandwidth usage; and modifying the requested action to reduce bandwidth consumption during completion of the requested action [0037].

In regard to claim 13, 29 and 45, Newberg teaches changing the requested action in comparison to actual bandwidth usage with respect to the application that generated the requested action [0037].

In regard to claim 14, 30 and 46, McKinnon III teaches changing the requested action in comparison to actual bandwidth usage with respect to a user of the application that generated the requested action [0065].

In regard to claim 15, 31 and 47, McKinnon III teaches changing the requested action in comparison to actual bandwidth usage with respect to an endpoint supporting the application that generated the requested action [0065].

*Allowable Subject Matter*

9. Claim 16, 32 and 48 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. Claim 16, 32 and 48 are objected to as also being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to the network management in general.

U.S. Patent 6,324,184 to Hou et al.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clemence Han whose telephone number is (703) 305-0372. The examiner can normally be reached on Monday-Thursday 7 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (703) 308-6602. The fax phone

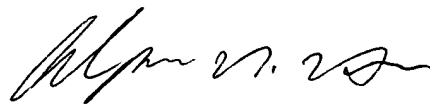


number for the organization where this application or proceeding is assigned is  
703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Clemence Han  
Examiner  
Art Unit 2665



ALPUS H. HSU  
PRIMARY EXAMINER